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O.A. No.675/2006

ORDER DATED 23rd JULY, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)
Hon'ble Mr. C.R. Mohapatra, Member (A)

Bijendra Prasad Tiwari..... Applicant.

V.

Union of India & Ors. Respondents.

Aggrieved by the cancellation of the candidature of the applicant for the post of Gangman/Group 'D' as per letter dated 16/28.06.2006 (Annexure-7), this Original Application has been filed by the applicant, with the following prayer:-

"(i) ...to quash Annexure-7 and pass necessary and appropriate orders directing the Respondents to give appointment to the applicant to the post of Gangman/Group 'D' in Operating Department as notified under Annexure-1.

(iv) To pass any other order/orders as deemed fit and proper."

2. When the O.A. came up for admission, this Tribunal admitted this O.A. and ordered notice to the Respondents. At the time of admission, on hearing the Ld. Counsel on either side, on 10.10.2006 this Tribunal passed an interim order that the result of the examination for the post of Gangman/Group 'D' shall abide by the result of the O.A.

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3. Thereafter, in pursuance to the notice issued by the Tribunal, counter has been filed for and on behalf of the Respondents, in which it is stated that though the documents furnished by the applicant have been verified both at the time of written examination as well as physical test, yet on subsequent verification the photograph and signature on the admit card for physical test are not at all matching with the present physical appearance of the candidate and also the present signature taken from the candidate in the verification statement. That is why the candidature of the applicant has been cancelled.

4. Heard Mr. N.R. Rout, Ld. Counsel for the applicant and Mr. G. Singh, Ld. Counsel for the Respondents.

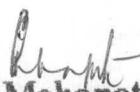
5. We have considered the averments contained in the O.A. and the contentions raised therein and the counter filed for and on behalf of the Respondents and also the documents produced before this Tribunal. On our anxious consideration of the arguments of the Ld. Counsel on either side and the averments contained in the O.A. and on perusal of the records, we are of the view that the order cancelling the candidature of the applicant cannot be justified. Admittedly, the application for the said post of Gangman/Group 'D' has been notified as per Employment Notice No.1/1998 ² ~~(Annexure A/4)~~. The applicant appeared in the written test as well as physical test in his name with Roll No.880591. Thereafter the applicant was called upon by a notice dated 19.08.2004 (Annexure-A/5) asking to report to the Office on

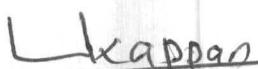
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29.09.2004 for verification of testimonials. In pursuance to the notice the applicant appeared before the authorities. After the appearance by the applicant in the office in pursuance to Annexure-A/5 notice, no information was given to the applicant regarding the result of the examination conducted by the Department. Thereafter the applicant preferred a representation dated 14.12.05 (Annexure-A/6) to the Divisional Railway Manager, Khurda Road Division, to intimate him about the selection and verification. However, as per order dated 16/28.06.2006 (Annexure A/7) the candidature of the applicant has been cancelled. The question now coming before us to decide is whether the stand taken by the Respondents in issuing Annexure-A/7 is correct or not. The fact that the application is of 1998 and the applicant appeared physically for written test as well as physical test basing on his photograph on his application. And even at the time of verification of testimonials in pursuance to the notice vide Annexure-A/5 again the applicant appeared physically. That apart, even in the counter there is no averment regarding the fact ~~that~~ how the Respondents came to the conclusion that there was difference in the physical appearance or in the signature of the applicant contained in the application form and other testimonials. The only point the Respondents considered is that the applicant appeared before the Verification Committee and the Committee, after scrutiny, communicated that the photograph and signature on the admit card for physical test are not at all matching with the present physical appearance of the candidate

and also the present signature taken from the candidate in the verification statement. We are wondering how such a conclusion could be arrived at without having the opinion of the expert as contemplated in Section 73 of the Evidence Act. It is not the case of the Respondents that the Verification Committee, ^{while} arriving at the aforesaid conclusion, has adopted any scientific method. In the above circumstances, we are of the view that Annexure-A/7 has no legal validity at all. Hence, we quash it. As per interim order passed by this Tribunal, one post of Gangman/Group 'D' has been kept vacant. If so, that post can be filled up by offering appointment to the applicant within a reasonable time, at any rate, within 30 days of the receipt of the copy of this order. It is also made clear that even though the applicant applied for the post during 1998 and the test was conducted prior to 2009, the applicant might have become overaged. The overage of the applicant shall not be taken as the ground for cancellation of his candidature. Ordered accordingly

7. With the above observation and direction, this Original Application is allowed. No order for costs.


(C. R. Mohapatra)
Administrative Member


(K. Thankappan)
Judicial Member